

REMARKS

Applicant has carefully reviewed the office action mailed March 6, 2006 and offers the following remarks in light of the concurrently submitted Declarations under 37 C.F.R. § 1.131.

Claims 1-4, 6-17, 19-32, 34-35, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Malmstrom in view of Bushnell et al. (hereinafter "Bushnell"). Applicant respectfully traverses.

Claims 5 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Malmstrom in view of Bushnell as applied to claims 1, 3, 4, 19, and 32 and in further view of Easley et al. (hereinafter "Easley"). Applicant respectfully traverses.

Claims 18 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Malmstrom in view of Bushnell as applied to claims 1 and 19 and in further view of Hallensal. Applicant respectfully traverses.

Applicant respectfully submits that the Bushnell reference does not qualify as prior art. 35 U.S.C. § 102(e) requires that the invention be "...described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent" (emphasis added). However, Applicant conceived of the present invention prior to the filing date of Bushnell's published patent application. As such, Bushnell does not qualify as prior art under § 102(e).

In order to establish that Bushnell does not qualify as prior art under § 102(e), Applicant herein presents the Declarations of Applicant's representative, Benjamin S. Withrow, and the inventor, Dany Sylvain, under 37 C.F.R. § 1.131, illustrating conception of the present invention prior to the filing date of the published Bushnell application. Based on the Declarations, Applicant asserts that the present invention was conceived of at least as early as April 14, 2003. (See Declaration of Benjamin S. Withrow, paragraphs 3-4; and Declaration of Dany Sylvain, paragraphs 2-5). Further, the Declarations show that from a date prior to May 12, 2003, diligent action was taken by Applicant's representative, Benjamin S. Withrow, the inventor, and the assignee of the present application to constructively reduce the invention to practice through the filing of the instant patent application on July 24, 2003. (See Declaration of Benjamin S. Withrow, paragraphs 3-13; and Declaration of Dany Sylvain, paragraphs 6-13). This diligent action included the filing of Provisional Patent Application Serial No. 60/472,291 on May 21, 2003, which disclosed the subject matter of the present invention as it was conceived on April

14, 2003, and as it is claimed in pending claims 1-37. The filing date of Bushnell's published application is May 12, 2003. Since the Declarations show that the date of invention for the present application was prior to May 12, 2003, and that diligent action was taken before May 12, 2003 through the filing of the present application, Bushnell does not qualify as prior art under 35 U.S.C. § 102(e). Since all of the pending claims 1-37 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over some combination that includes Bushnell, the rejection of pending claims 1-37 is improper and should be withdrawn. Applicant reserves the right to address Malmstrom, Easley, and Hallensal at a future date if required.

In view of the discussion above, claims 1-37 are allowable. Reconsideration is respectfully requested. If any issues remain, the Examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issuance of the present application

Respectfully submitted,

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